

**WILKINS FURMENT**  
13477-066  
Taft Correctional Institution  
PO Box 7001 A4D  
Taft, California 93268

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**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,  
Plaintiff/Appellee,

v.

WILKINS FURMENT,  
Defendant/Appellant.

CASE NO. A05-0097-01 CR

**PRO SE MOTION TO VACATE ORDER OF JUDGMENT  
ENTERED BY FRAUD AND DEFENDANT'S  
WITHDRAWAL OF PLEA AGREEMENT PURSUANT  
TO FED.R.CIV.P. 60(b)**

COMES NOW, Defendant, appearing *in pro se*, and moves this Honorable Court for its order vacating the order of Judgment of Conviction entered by fraud on the Court pursuant to Fed.R.Civ.P. 60(b)(3, and 6)<sup>1</sup>, and withdrawing Defendant's Plea Agreement; proceeding to trial on the basis of "actual innocence."

Defendant is currently serving sentence at the Taft Correctional Institution at Taft, California. Defendant is currently without benefit of counsel,<sup>4</sup> and is illiterate<sup>2</sup>; having filed this motion with the aid and assistance of another inmate.<sup>3</sup>

At the time Defendant executed the Plea Agreement he was represented by

1. Fed.R.Civ.P. 60(b)(3), and (6): On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons...(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; ...(6) any other reason justifying relief from the operation of the judgment.

2. Illiteracy : "The condition of one who cannot read or write and, in general, one who is unlettered or unlearned."

3. Johnson v. Avery, 393 U.S. 483, 487, 21 L.Ed.2d 718, 722, 89 S.Ct. 747 (1969). Illiterate or poorly educated prisoners have the right to assistance from "jail-house" lawyers to present valid constitutional claims.

4. Defendant filed a Motion to Terminate Legal Representation and Proceed *In Pro Se* Pending Substitution of Legal Counsel on April 16, 2007.

counsel. However, counsel refused to read the Plea Agreement to Defendant stating that Defendant "would not understand the legal technicalities in the Plea Agreement so there was no point."

Further, counsel misrepresented the actual content of the Plea Agreement to Defendant, and the actual consequences of Defendant's execution of the Plea Agreement. Defendant was told by counsel that regardless of what questions the Court would ask, Defendant was to always answer in the affirmative; admitting to whatever the Court required, rather than respond truthfully if the proper answer was negative. This instruction was absolute and without exception and Defendant was told that more dire consequences would result if Defendant did not heed counsel's instructions.

Defendant was further instructed not to voice any objections or comments during sentencing, and when Defendant was testifying on the stand at sentencing, he did not understand that he had the right to state his actual innocence of the charges in the indictment. Defendant's counsel deliberately misled Defendant by stating that the Plea Agreement and subsequent sentencing proceedings were mere formalities; that counsel and the Government had already agreed to a minimum sentence, and that the Court was required to follow the Government's recommendation.

At the time of the execution of the Plea Agreement, and sentencing proceedings, Defendant did not understand the criminal justice process, nor was anything explained to him by his counsel. Nevertheless, counsel made fraudulent misrepresentations to Defendant, and to the Court, for personal economic gain, and economy of time, with complete disregard for Defendant's due process rights.

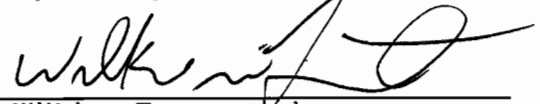
Defendant submits that he is actually innocent of the charges contained in the indictment and that no evidence exists to the contrary, and that he is entitled to a fair trial on the merits of the charges and proper representation by legal counsel.

Based on the foregoing, Defendant further submits that pursuant to Fed.R. Civ.P. 60(b), a fraud has been committed on the Court; violating Defendant's right

to effective assistance of counsel as provided by the Sixth Amendment. Further, Defendant is entitled to a hearing on the merits of this motion, or in the alternative, the Court granting his motion; verified by affidavit, on its face.

Dated: May 29, 2007

Respectfully submitted,

  
\_\_\_\_\_  
Wilkins Furment, in pro se  
Defendant


### AFFIDAVIT AND VERIFICATION

I, Wilkins Furment, after having been duly sworn, do hereby attest and affirm the following:

1. I am the Defendant in the above entitled action, and currently an inmate at the Taft Correctional Institution, Taft, California.
2. I am illiterate, and unable to read or write.
3. The facts and statements contained in the above motion were made by me, of my own knowledge, and are true and correct, and I verify same.
4. After the motion was prepared by an unbiased and independent third party, it was clearly read to me by the herein below Notary Public.
5. While I do not comprehend statutes and citations of law, I understand that I was, and currently am, entitled to effective assistance of counsel and a fair trial on the merits.

Affiant further sayeth not.

Executed this 29 day of May, 2007, under penalty of perjury, at Taft Correctional Institution, at Taft, California.

  
\_\_\_\_\_  
Wilkins Furment

See attached  
Notary Certificate  
ES

**CALIFORNIA JURAT**

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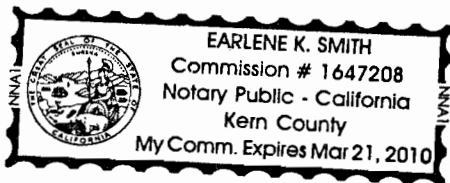
State of California  
County of Kern

Subscribed and sworn to (or affirmed) before me on  
this 29th day of May 2007

By Wilkins Furman

Proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.

  
Earlene K. Smith, Notary Public  
Commission expires 21 March 2010



**CERTIFICATE OF SERVICE**

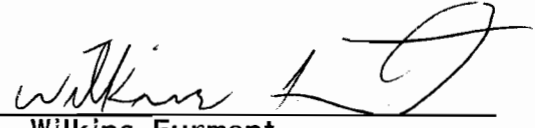
I, Wilkins Furment, hereby certify that I have served a true and correct copy of **Pro Se Motion to Vacate Order of Judgement of Judgment entered by Fraud and Defendant's Withdrawal of Plea Agreement Pursuant ot Fed.R.Civ.P. 60(b)**, which is deemed filed at the time it was deposited with prison authorities for forwarding by U.S. Mail at Taft Correctional Institution which has no separate system for inmate legal mail [Houston v. Lack, 487 U.S. 266, 276, 108 S.Ct. 2379 (1988)], by placing same in a sealed, first-class postage pre-paid envelope, addressed to:

Frank Russo, AUSA  
United States Attorney's Office  
222 West 7th Ave. #9  
Anchorage, Alaska 99513

and deposited same in the institution's mail service at Taft Correctional Institution at Taft, California.

I declare that the foregoing is true and correct underpenalty of perjury [Title 28 U.S.C. §1746].

Dated this 30 day of May, 2007.

  
\_\_\_\_\_  
Wilkins Furment

Wilkins Furment  
13477-066  
Taft Correctional Institution  
PO Box 7001 A4D  
Taft, California 93268

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT  
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

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Anchorage, Alaska 99513-7554

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